

Karbhari Alias Joseph Shankar Nikam Vs. Rahibai Anaji Gite and anr.

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Court : Mumbai

Decided On : Mar-28-1984

Reported in : AIR1984Bom392; 1984MhLJ432

Judge : Chandurkar, C.J.

Acts : [Maharashtra Land Revenue Code, 1966](#) - Sections 36(2) and 36(3); Schedule Castes and Scheduled Tribes Orders (Amendment) Act, 1976

Appeal No. : Writ Petition Nos. 418 to 420 of 1979

Appellant : Karbhari Alias Joseph Shankar Nikam

Respondent : Rahibai Anaji Gite and anr.

Advocate for Def. : M.V. Sali and;J.R. Lalit, Advs.

Advocate for Pet/Ap. : C.R. Dalvi, Adv.

Judgement :

ORDER

1. In all these three petitions the question involved is whether the petitioner. Who is the same person in all the petitions, had on conversion to Christianity, ceased to belong to Bhil tribe in the district of Ahmednagar.

2. The question arose in the context of a claim made by the petitioner for restoration of possession of the land sold by him to the three respondents. The claim for restoration was made under Section 36(2) and (3) of the [Maharashtra Land Revenue Code, 1966](#), before the Tahsildar, Sangamner. A certificate of baptism was produced before the Tahsildar which showed that the petitioner whose name is given as Karbhari alias Joseph Shankar Nikam, had been converted to Christianity. Relying on this petitioner had become a Christian and hence proceedings should be dropped.

3. The petitioner filed an appeal to the Revenue Tribunal. The Revenue Tribunal noted the fact that the petitioner had admittedly been converted to Christianity on 23rd July 1967. Before the Tribunal reliance was placed on a Government Resolution issued by the State Government, being Government Resolution No. CBC 1058-E dated 14th May 1958 in which referring to the question as to whether persons belonging to Scheduled Tribes, who were converted Islam, Christianity or other faiths, should be held eligible for educational and other concessions sanctioned by the Government for Scheduled Tribes, the Government directed as follows :--

'Government has been advised that members of the Scheduled Tribes even after conversion to Christianity, Islam, etc., would not cease to be members thereof (Scheduled Tribes) and would, therefore, be entitled to the concessions available to them before their conversion, Government has decided that persons belonging to the Scheduled Tribes, after their conversion to Christianity, Islam or other faiths, should be held eligible for the concessions and privileges previously admissible to them provided that they apply for the concessions as members of Scheduled Tribes.'

4. The Tribunal held that the aforesaid Government resolution was issued in pursuance of any of the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter referred to as the 'Restoration of Lands Act') and being merely administrative directions would not be of any help to the petitioner. The Tribunal referred to the Explanation in Section 36 of the Maharashtra Land Revenue Code and held that Christian were not notified as Scheduled Tribes in the said Resolution, and, therefore, the petitioner, who had been converted to Christianity, could not be deemed to be a tribal within the meaning of the Restoration of lands Act. All the three revision petitions were, therefore dismissed by the Tribunal.

5. In these three petitions, Mr. Dalvi appearing on behalf of the petitioner had contended that merely on conversion and that unless it is shown that the person concerned on conversion to a different religion had treated himself as something different from the Scheduled Tribe or that the Scheduled Tribe had declined to accept him as one of its members as he originally was, such a person would continue to be a member of the Scheduled Tribe and consequently, he was entitled to pursue his rights either under the Restoration of Lands Act or under the Maharashtra Land revenue Code. The learned Counsel has placed reliance on a decision of the Patna High Court in Kartik Oraon v. David Munzni : AIR1964Pat201 .

6. According to the respondents where a member of a Scheduled Tribe gets converted to a religion like Christianity in the instant case, that must have the effect of the said convert going automatically out of the Tribe and, therefore, according to the learned Counsel appearing on behalf of the respondents, the claim made by the petitioner was not maintainable either under the provisions of the Maharashtra Land Revenue Code or under the provisions of the Restoration of Lands Act.

7. Now, there is no doubt that under the provisions of the Schedule Castes and Scheduled Tribes Orders (Amendment) Act, 1976, so far as Maharashtra is concerned, the Bhil Tribe has been notified as a Scheduled Tribe. The list of Scheduled Tribes in Maharashtra is in Part IX and Entry 8 in this part includes different categories of Bhils as follows :

'Bhil, Bhil Garasia, Dohil Bhil, Dungri Bhil, Dungri jGarasia, Mewasi Bhil, Rawal Bhil, Tadvi Bhil, Bhagalia Bhilala, Pawra, Vasava, Vasave.'

8. There is, therefore, no doubt that Bhil is now a Scheduled Tribe. The question, however, is whether a Bhil by virtue of this conversion goes out of the Tribe of Bhils. Each Tribe has some special characteristics, as will appear from the extract from Encyclopaedia Britannica which is reproduced in Kartik Oraon's case, : AIR1964Pat201 . That passage runs as follows:--

'Tribe' has been defined in Encyclopedia Britannica, Volume 22, 1961 Education, at

page 465, by W.H.R. Rivers there for such common purposes as 'warfare,' Other typical characteristics include a common name, a contiguous territory, a relatively uniform culture or way of life and a tradition of common descent. Tribes are usually composed of a number of local communities, e. g. bands, villages or neighbourhoods, and are often aggregated in clusters of a higher order called nations. The term is seldom applied to societies that have achieved a strictly territorial organisation in large states but is usually confined to groups whose unity is based primarily upon a sense of extended kinship ties. It is no longer used for kin groups in the strict sense, such as clans.'

9. Members of every tribe have, therefore, a typical tribal way of life, their manners and customs distinguish them from other tribes and as long as a person who was a member of a tribe continues to follow the tribal way of life, follow their customs and traditions, it is difficult to see how merely by conversion, the convert can be said to have gone out of the tribe. In Kartik Oraon's case : AIR1964Pat201 , the question was whether kartik Oraon, who belonged to the Oraon Tribe and who converted himself to Christianity, ceased to belong to the tribe. On evidence in that case it was found that even if a non-Christian Oraon omitted to observe some of the festivals and observed certain festivals in a manner different from others, he did not cease to be a tribal and that Christian Oraons also observed some of the festivals of the tribe which were not in conflict with the religion of Christianity. It was found that non-Christian Oraons treated the converted oraons as tribals calling them as 'Christian Oraons' and it was therefore, held that the converted Oraons were first Oraons and Christians next. In my view, the same test must apply in the instant case. If a Bhil after conversion to Christianity maintains the tribal ways of life in all matters, he will continue to remain a tribal. The question as to whether a person had continued to be tribal or not will, therefore, depend on evidence as to what is his way of life after the conversion and whether he observes the same traditions, the customs and the usages or festivals way of life, it must necessarily mean that the tribe has treated him as one amongst themselves and he will continue to be a member of the tribe. These matters can be determined only on evidence. It will, therefore, not be possible to sustain the order rejecting the applications of the petitioner on the short ground that he has been converted to Christianity.

10. The impugned orders of the Revenue Tribunal and the Tahsildar, Sangammner, are, therefore, quashed. All the three applications are remitted back to the Tahsildar for recording the necessary evidence which may be adduced by the parties and for a decision according to law in the light of the legal position earlier laid down. The petitions are thus allowed. However, the circumstances of the case, there will be no order as to costs.

11. Petitions allowed.